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Yvonne Kupfermann

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HUNGARY'S REFUGEE CRISIS: WHY A UNIFORM APPROACH IS NOT THE SOLUTION

YVONNE KUPFERMANN*

ABSTRACT

The recent refugee crisis that swept over many European nations requires an inquiry into how to balance humanitarian concerns with the resources of the respective nations involved. Oftentimes, the approach is purely humanitarian, placing much of the focus on inclusion and resettlement. However, countries that stray from this humanitarian approach are often criticized. This Note aims to offer a new theoretical framework for analyzing a refugee crisis of this scope. It uses Hungary as a case study to demonstrate how history can play a role in how a refugee crisis is handled and to provide concrete examples of a country receiving backlash for implementing protectionist measures. Broadly stated, this Note highlights the importance of avoiding uniform solutions for nations of differing postures by providing the relevant factors to consider when approaching an emergency of this type.

I. INTRODUCTION

In the wake of a rapidly growing European population, human rights have been at the forefront of many European leaders' minds. This focus is much deserved, as populations in some European nations have nearly doubled in a mere few months.¹ The scale of the refugee crisis, though always relevant, has become increasingly so by the lack of remedies in place for a problem of this scope. European leaders have been reprimanded for the measures they have implemented, suggesting that they are insensitive to the greater human rights issue at stake without acknowledging that no other adequate solution is in place.² Given

* Candidate for Juris Doctor, Notre Dame Law School, 2017; Bachelor of Arts in Psychology and Political Science, University of Michigan, 2014. Thank you to Professor Christine Venter for her unconditional support throughout this process and for making my vision possible, to the members of the *Notre Dame Journal of Law, Ethics, & Public Policy* for never complaining about how wrong my Bluebook citations were, and to my wonderful Mom and Dad for always inspiring me to pursue my passions within Immigration Law. I am so grateful.

1. See Amanda Taub, *Europe's refugee crisis, explained*, Vox (Sept. 5, 2015, 11:40 AM), <http://www.vox.com/2015/9/5/9265501/refugee-crisis-europe-syria> (noting that since the beginning of the Syrian war in 2011, four million people have fled the country and that many of these migrants fled to Europe, estimating that 42,500 more individuals join the migration daily).

2. Holly Yan et al., *Refugee crisis: Hungary uses tear gas, water cannons on migrants at border*, CNN (Sept. 16, 2015, 3:02 PM), <http://www.cnn.com/2015/09/16/world/europe-migrant-crisis/> (reporting that in response to migrants entering the country, the Hungarian government blocked its borders with a razor-wire fence and had Hungarian police respond to the situation with tear gas and water cannons and that Hungary was placed

the many political and world leaders that have criticized the actions of the Hungarian government, a more pressing issue has risen to the surface. This issue urges the consideration of whether the European Union's mission of opening its borders through its European Union member-states is, in fact, in direct conflict with a nation's right to preserve its own cultural identity. Further, it questions whether the right of individuals to be refugees is at odds with a nation's right to cultural identity and, if so, what remedies can be put into place to combat this conflict. While these rights, with regard to how they co-exist, are not ones that have been tested before, they are becoming the foundation for how to propose remedies that nations would be willing to implement.

This assessment is one that requires more than just an analysis of the current state of the refugee crisis and how various nations are responding to it. It requires a step back and a more general overview of the rights that are in question. Given that many of the European nations being targeted by migrants are nations in which there have been conflicts surrounding cultural identity due to war or economic instability, the history of these nations becomes an important lens through which to understand why a nation desires to protect its cultural identity. This is especially true in the context of Hungary, as the country has fought its way to being proud of the Hungarian identity after years of concealing it following the world wars. Thus, this Note aims to examine the relevant rights that are at stake—the right to refugee status and the right to preserve a country's cultural identity—through the specific case study of Hungary. After these rights are examined in greater detail, the solutions that some nations have implemented will be introduced, providing a foundation for how a nation like Hungary could respond to the refugee problem. This study will reveal the distinction between refugees and migrants and a country's duty in the face of each; it will provide context for Hungary's response to the refugee crisis through an examination of the nation's history and heightened focus on cultural identity; and it will aim to reconcile the mission of the European Union in opening nations' borders while also stressing the importance of giving deference to a nation's right to preserve its own cultural identity and protecting individuals' right to refuge. The need for proactive remedies is one of the most fundamental issues surrounding the refugee crisis in Europe. While it is also one of the most difficult issues, an examination of other nations' approaches presents the idea that a uniform approach to the refugee crisis may not be the best one. Giving deference to countries through what is known as the "margin of appreciation,"³ in a sense, encompasses what may happen if solutions to the crisis are implemented and forced upon the relevant European

under fire by other European Union nations for using "not acceptable" measures that were "against . . . European rules" but that the Hungarian police force maintained that "proportionate police force" was being used).

3. Yuval Shany, *Toward a General Margin of Appreciation Doctrine in International Law?*, 16 EUR. J. INT'L L. 907 (2005).

countries.⁴ Additionally, acknowledging a nation's right to preserve its cultural identity through the various remedies that could be implemented by the European Union, for example, may increase the nation's willingness to adopt these remedies. Thus, the idea of implementing a remedy coincides with the understanding of what rights are at stake and why these rights should shape the type of remedy that is implemented.

II. THE RIGHTS AT STAKE

A. *The Right to Refugee Status*

After World War I, "millions of people fled their homelands in search of refuge."⁵ This large number of fleeing refugees created a need for international travel documents that regulated the movement and entitled these individuals to certain rights in the new countries. As a response, in 1951, following a Geneva conference, a key document was created that outlined the definition of who is considered a refugee, the relevant rights of the refugees, the obligations of nations in the face of these rights, and what groups of people do not need to be afforded this set of rights.⁶ This became known as the 1951 Convention. In addition, because this document was narrowly tailored to only reference European refugees following the war, amendments were made to the Convention, creating a 1967 Protocol that removed the narrow scope and placed it in the context of the entire world.⁷ This guaranteed that the rights outlined in the document were available not only to the European refugees, but also to others who were similarly situated because of states of conflict. However, it is important to note that at the creation of the 1951 Convention, there was not a pressing concern that refugees entering nations could pose a risk through acts of terrorism. Because of this, there is a lack of heightened security through stricter rules in the 1951 Convention that would account for these types of dangers.

This international convention is often cited at the crux of this human rights issue because it recognizes that a nation-state, especially during a time of conflict, can infringe upon the liberties that individuals have and force them to take steps to regain this sense of liberty. In many cases, this entails individuals fleeing from their home countries in order to escape the conflict and oppression. In relevant part, the document outlines that a refugee is an individual who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" and "is outside the country of his nationality and is unable or, owing to such fear, is

4. CHRISTINE M. VENTER, INTERNATIONAL WOMEN'S RIGHTS, EQUALITY, AND JUSTICE 315 (2012).

5. U.N. HUM. RTS. COMM'N, THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL (2011), <http://www.unhcr.org/4ec262df9.html>.

6. See Convention Relating to the Status of Refugees, July 28, 1951 (entered into force Apr. 22, 1954), 189 U.N.T.S. 137 [hereinafter 1951 Convention].

7. U.N. HUM. RTS. COMM'N, *supra* note 5.

unwilling to avail himself of the protection of that country.”⁸ This definition of a refugee excludes individuals who:

[have] voluntarily re-availed [themselves] of the protection of the country of [their] nationality; or, having lost nationality . . . voluntarily re-acquired it; or [have] acquired a new nationality, and enjoys the protection of the country of new nationality; or . . . [they] can no longer, because the circumstances in connexion with which [they were] recognized as [refugees] have ceased to exist, continue to refuse to avail [themselves] of the protection of the country of nationality.⁹

These exclusions suggest that the right of an individual to be a refugee is not absolute. Rather, it is a limited right that requires individuals to be of a specific category before they can claim the rights outlined in the Convention from the nations to which they are fleeing. This becomes especially relevant when refugees discuss their desire to assimilate into the country they have fled to, as they should be afforded the same rights that other citizens in that nation have if the nation’s resources allow for it, but not necessarily an increased amount of rights due to their refugee status.

Further, in the specific context of Hungary, the Prime Minister, Viktor Orbán, has raised concerns that the “‘overwhelming majority’ of migrants in Europe are not refugees but are merely seeking a better life.”¹⁰ This distinction is important in the context of the 1951 Convention because “the 1951 Refugee Convention and a string of EU laws [urge that] European countries must offer refuge or other types or protection to asylum-seekers who can demonstrate that they are fleeing war or persecution.”¹¹ This suggests that, even if the migrants are leaving behind a worse life with poverty and less opportunity, European countries are under “no such obligation” to these migrants in terms of affording them rights.¹² Thus, if it is true that the majority of “refugees” in Hungary are considered economic migrants rather than refugees,¹³ then Hungary owes no duty to them under the 1951 Convention. This may also be true, then, if the refugees are discovered to be a danger, in any capacity, to the new country. Thus, any proposed solutions to the refugee crisis should acknowledge this distinction.

If, however, this is not the case and the migrants are, indeed, refugees that are fleeing from a situation of conflict, the 1951 Convention provides that countries must accord refugees treatment “at least as favourable as that accorded to their nationals.”¹⁴ Specifically, the coun-

8. 1951 Convention, *supra* note 6, at art. 1.

9. *Id.*

10. T.N., *How many migrants to Europe are refugees?*, THE ECONOMIST (Sept. 7, 2015, 11:50 PM), <http://www.economist.com/blogs/economist-explains/2015/09/economist-explains-4>.

11. *Id.*

12. *Id.*

13. As stated, economic migrants are those that are seeking a better life due to destitution rather than fleeing war or persecution.

14. 1951 Convention, *supra* note 6.

try must accord various rights and freedoms including: the freedom to practice their own religion; lawful residence following “forcible displacement;” an acknowledgement of particular rights (e.g. marriage); “the same protection as is accorded to nationals of that country” with regard to artistic rights and industrial property; the right of association; “free access to the courts of law on the territory of all contracting states;” the right to wage-earning employment, self-employment, and liberal professions; the right to public education and housing; the right to administrative assistance and social security; the right to transfer assets, the prohibition of expulsion of refugees; and, finally, the facilitation of naturalization.¹⁵ This extensive list of rights, carefully detailed throughout the international convention, suggests that refugees are held to nearly the same standard as a country’s own nationals. While this is positive in regard to the human rights sphere and granting individuals the rights they are typically fleeing their home countries for, it presents many issues as well.

For example, the 1951 Convention and 1967 Protocol contain procedural inconsistencies on how to determine if particular migrants are refugees or economic migrants or, even, whether or not the individual in question fits within the definition of a refugee.¹⁶ This lack of a clear procedural element “resulted in disparities among different States as governments craft asylum laws based on their different resources, national security concerns, and histories with forced migration movements.”¹⁷ While the creation of the 1951 Convention and 1967 Protocol were significant steps in understanding the rights of refugees, they also highlighted an issue that goes to the understanding of how the rights of cultural identity and the right to refuge can co-exist. If there are disparities among nations on how to define who is a refugee for purposes of according these individuals the proper rights as outlined by the 1951 Convention, the disparities likely reflect the ability of each nation, in terms of its available resources, to house the increasing number of refugees. Additionally, it may also reflect the level of commitment a nation may feel to protecting its cultural identity. If a nation has a greater commitment to preserving its cultural identity and wants to prevent individuals—individuals with their own dominant cultural identities—from fleeing to their country, then it may be less likely to recognize individuals under a refugee status in its asylum laws.

B. *Other Obstacles to Implementation of Rights*

Another significant issue with the rights outlined by the 1951 Convention and the 1967 Protocol is the weak implementation by countries of these refugee rights. A document by the United Nations High Com-

15. *Id.* at 4.

16. See *Asylum & the Rights of Refugees*, INT’L JUST. RESOURCE CENTER, <http://www.ijrcenter.org/refugee-law/> (noting that while the definition of who qualifies as a refugee is included in the 1951 Convention, there is no way for “States parties . . . to determine whether an individual meets the definition of a refugee”).

17. *Id.*

missioner for Refugees disclosed three obstacles of implementation. These obstacles were summarized as fitting into three categories: "socio-economic, legal and policy or practical."¹⁸ These obstacles were identified after a recent inter-sessional meeting of the Sub-Committee where the United Nations High Commissioners for Refugees were to submit basic questions about implementation.¹⁹ They acknowledged that a tension exists between what nations are able to do in the best interest of their own citizens versus what the nations are able to do to aid refugees. The socio-economic obstacle stems from countries "suffering their own severe economic difficulties, high unemployment, declining living standards, shortages in housing and land and/or continuing man-made and natural disasters," and not having the additional resources to adequately aid refugees.²⁰ The legal obstacle suggests that there are "inconsistencies between, existing national laws and certain Convention obligations."²¹ In other words, the Convention obligations are not being reflected in the national laws and, thus, are not being followed by individual nations. Additionally, the "protection of refugee rights becomes an exercise of powers and discretion by officials, rather than enforcement of specific rights identified and guaranteed by law."²² Finally, the practical flaws of implementation include the "maintenance of the geographic limitation by some countries."²³ Other than the three primary obstacles, the weak implementation of the rights of refugees by individual countries was also attributed to the varying interpretations and selective application of the definition of a refugee.²⁴ These differing interpretations may stem from the lack of a definition for certain terms in the Convention (e.g., persecution and well-founded fear).²⁵ Thus, a summary of four issues that countries face in implementation was created: the better promotion of implementation by the United Nations High Commissioner for Refugees; the possibilities for monitoring implementation; the difficulties in fulfilling Convention obligations (largely due to a lack of resources and a lack of legal presence in national laws) and varying interpretations and selective application of Article I of the Convention; and the extent to which these limit the proper application of the Convention.²⁶

Thus, while human rights advocates were quick to applaud the implementation of the 1951 Convention and the 1967 Protocol as a step in the right direction for recognizing the rights of refugees, many issues still exist with both the understanding of the rights as well as the

18. U.N. Hum. Rts. Comm'n, Implementation of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees—Some Basic Questions, U.N. Doc. EC/1992/SC.2/CRP.10 (June 15, 1992).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* (discussing the definition of the term "refugee" in Article I of the Convention).

implementation of these rights by individual nations. This is not to say that the right to be a refugee is not recognized and deserving of significant attention. Rather, it provides a framework through which to understand that, despite the implementation of this Convention, nations often prioritize what would be best for their own citizens and what they are able to accomplish with their resources over the rights of these refugees, and that this idea must be reflected in the proposals of solutions to the problem. While a nation prioritizing its own interests may be seen as unacceptable²⁷ and against the purpose of implementing this international convention, it also demonstrates that preserving a country's cultural identity may seep into the established rights of refugees, creating difficulties in prioritizing the rights of refugees over the preservation of cultural identity. This is especially true if refugees may pose danger to a particular nation.

C. *The Right to Preserve Cultural Identity*

While the right to preserve cultural identity is not as clearly established as the right to refugee status, many sources, namely, current human rights laws, provide guidelines for the interpretation of this right. As it stands, there is significant movement toward a right to cultural identity in international human rights law.²⁸ To best understand why, there is a need to establish what cultural identity means as both a collective right (seen in the contexts of nations) and as an individual right. First and foremost, the idea of cultural identity suggests that there is "structural stability in a community or group of people" because of their "sameness."²⁹ "[C]ultural identity is compound and composed of multi-dimensions that will increase and tend to be more complex with development of society."³⁰ This idea that cultural identity will tend to be more complex with the development of society is particularly important in the present context. Given that what ties individuals together is their "sameness" through more areas than just "shared cultural values," a history of having to conceal that cultural identity or fight harder to establish it may promote an increase in a nation's desire to protect it.³¹ Moreover, "there is an increasing demand to secure the right to cultural identity as a human right since restriction or oppression of cultural identity can lead to confusion, alienation or even violent conflict."³² This best explains the scope of the right on both a macro and a micro level.

Cultural rights have primarily found their grounding in two international human rights documents: the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on

27. Shany, *supra* note 3, at 930.

28. *Towards a Right to Cultural Identity in International Human Rights Law*, CULTURAL RIGHTS, <http://www.culturalrights.net/en/revisiones.php?c=12&p=110> [hereinafter CULTURAL RIGHTS].

29. YUSI TENG, CULTURAL IDENTITY AND EUROPEAN INTEGRATION 2–3 (2008).

30. *Id.* at 5.

31. *Id.*

32. CULTURAL RIGHTS, *supra* note 28.

Civil and Political Rights. The two relevant sections of these covenants are Article 15 and Article 27, respectively.³³ Article 15 of the International Covenant on Economic, Social, and Cultural Rights provides that “[t]he States Parties to the present Covenant recognize the right of everyone: [t]o take part in cultural life The steps to be taken . . . to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”³⁴ Similarly, Article 27 of the International Covenant on Civil and Political Rights provides, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture . . . or to use their own language.”³⁵ An examination of these provisions demonstrates a commitment in the human rights sphere to prevent deprivation of individuals’ rights to practice their own culture or to associate themselves with their cultural ideals.

While critics may argue that the development of a concrete right to preserve cultural identity, within human rights covenants, for example, could have negative consequences due to “the vagueness of the concept” of cultural identity as well as the “risk of abuse” by countries, “[m]any communities and individuals need protection of their cultural identity.”³⁶ This protection is so important that “[i]t should be the basis to end policies of forced assimilation and discrimination.”³⁷ To understand the connection between cultural identity and migration, it is also important to acknowledge that cultural identity can be lost, creating feelings of “dislocation, alienation, and isolation.”³⁸ However, upon settling into a new nation and being exposed to a new culture, “cultural identity is likely to change and that encourages a degree of belonging.”³⁹ Here, it becomes more transparent why a nation’s desire to preserve its own community’s cultural identity could be at conflict with an individual’s desire to obtain a new cultural identity in order to feel a sense of belonging. In leaving their respective countries, economic migrants and refugees alike desire to detach from their home country to either move on to a better life with more opportunities or to escape a situation of dangerous conflict. This likely allows fleeing individuals to change aspects of their cultural and ethnic identities.⁴⁰ So, the question becomes, what happens when these cultural identities interact with one another? While many migrants and refugees hope to assimilate into their new country, “[t]he process of acculturation

33. *Id.*

34. International Covenant on Economic, Social and Cultural Rights art. 15, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

35. International Covenant on Civil and Political Rights art. 27, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

36. CULTURAL RIGHTS, *supra* note 27.

37. *Id.*

38. Dinesh Bhugra, *Migration, Distress, and Cultural Identity*, 69 BRIT. MED. BULL. 129, 129 (2004).

39. *Id.*

40. *Id.*

requires two cultures to come into contact and both cultures may experience some change. In reality, however, one cultural group will often dominate the other group.”⁴¹ This specific principle is one that requires the most attention in examining the connection between the right to refuge and the right to preserve cultural identity.

When migrations include large groups of people, these individuals travel in groups and settle in one country. This country, then, is likely filled with individuals that are bonded together through their cultural identities. This identity may even be strengthened by the fact that these individuals have experienced the same conflict situations or are trying to escape their home countries with the same motivations of finding a better opportunity or better life for themselves and their families. Thus, the cultural identity of these migrants now conflicts with the new country's cultural identity. While it is said that, typically, one cultural group will dominate the other cultural group in situations where two cultural identities come in conflict with one another, the concern of the new country is that the cultural identity of the large numbers of migrants will begin to dominate instead of the other way around. Thus, this creates resentment within the new country in accepting these migrants or refugees and encouraging their assimilation into the country. This is especially true when countries have previously fought for their right to practice their own culture or if the new refugees/migrants are considered dangerous.⁴²

III. THE HISTORICAL FRAMEWORK

A. *Hungary's Fight*

The strong sense of preservation of the Hungarian identity did not only find its source from the usual pride and loyalty a citizenry feels towards its “home country.” Hungarians’ unparalleled attachment stems from its citizenry having to bond together after being deprived of practicing their own cultural traditions and publicizing their cultural identity. To understand why it can be said that Hungary has fought for its right to practice its own culture, an examination of the end of World War I and World War II is of particular relevance.

At the beginning of World War II, Hungary had hope that it would be able to reinstate the Hungarian kingdom—a kingdom that had lost a vast amount of its territory through the Treaty of Trianon following World War I. This treaty re-drew the borders of Hungary so that the country would lose “two-thirds of its prewar territory and 40 per cent of its population to Yugoslavia, Czechoslovakia and Romania.”⁴³ As a consequence of this, Romania had the largest population of Hungarian minorities living within its borders.⁴⁴ The conflict between Hungary

41. *Id.* at 134.

42. TENG, *supra* note 29.

43. Martin Mevius, *Kicking Under the Table: Minority Conflict Between Hungary and Romania*, in *ETHNICITY, NATIONALISM AND THE EUROPEAN COLD WAR* 87, 87 (Robert Knight ed., 2014).

44. *Id.*

and Romania, specifically, is the most important for understanding Hungary's preservation of its cultural identity. Viewing the conflict through the relationship between Hungary and Romania is not intended to suggest that Hungary was only at odds with Romania during this time. Rather, it is reflective of Hungary suffering the greatest loss of its people to Romania. This conflict between Romania and Hungary was reignited during World War II because, as a result of World War II, Transylvania was redistributed to Romania.

According to the 2011 census, there were "about 1.2 million ethnic Hungarians in Romania, making up 6.5% of the total population."⁴⁵ The ethnic Hungarians living in the now-Romanian land of Transylvania were subjected to extreme oppression by the Romanian political regime. Given the hostility between the countries following many redistributions of land, it was in Romania's best interest to treat the ethnic Hungarians as their own citizens, urging the citizens to assimilate into the Romanian culture by speaking their language instead of Hungarian and practicing Romanian cultural traditions rather than their own. For example, Romanian officials "banned the hoisting of the Szekely flag atop office buildings," a flag that represented traditional Hungarian culture.⁴⁶ In response to these discriminatory actions, Hungary's ambassador to Romania, at the time, expressed support for ethnic Hungarians aligning themselves with Szekely values.⁴⁷ Additionally, in May 2010, "the Hungarian parliament decided to give ethnic Hungarians who live outside the country the right to claim Hungarian nationality as a second citizenship—which potentially includes the right to vote."⁴⁸ Romanian officials were displeased with these advances by the Hungarian government, saying that these actions interfered with "domestic Romanian affairs."⁴⁹ The Romanian response to these acts of "disloyalty" was complete isolation.⁵⁰ In order to further this isolation, the government shut down the border with Hungary completely—arresting and shooting peasants that were working at the Hungarian border.⁵¹

It is also important to note that the Szekely region—a region largely encompassed within the borders of Transylvania—was one of the poorest in Romania.⁵² This makes the citizens that occupy this land "particularly susceptible to political manipulation, from both Romanian and Hungarian politicians [and,] [i]n this context, the appeal to nationalism is often a common strategy."⁵³ However, ethnic Hungarians stress the importance of being able to preserve their cultural identity, specifically through "the ability to teach their own language in

45. Stratfor, *Hungary and Romania Face Off over an Ethnic Dispute*, EURACTIV (Feb. 21, 2013, 11:15 AM), <https://www.euractiv.com/section/languages-culture/opinion/hungary-and-romania-face-off-over-an-ethnic-dispute/>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Mevius, *supra* note 43, at 102.

51. *Id.*

52. Stratfor, *supra* note 45.

53. *Id.*

schools or fly their own flags.”⁵⁴ While these desires of the ethnic Hungarians do not necessarily threaten the unity of the Romanian territory, they have “strengthened regionalist sentiments that were previously dormant elsewhere.”⁵⁵ This suggests that there are many areas of Europe, particularly through the examination of minority groups living in other countries, where the minority group’s cultural identity is in conflict with the dominant cultural identity. While it is true that many of these conflicts are not readily apparent, Hungary’s dedication to preserving its cultural identity is apparent through not only the ethnic Hungarians living in Romania, but also the values that are embodied by the Hungarian citizens living in Hungary.

Almost all states in East-Central Europe have recognized in their respective constitutions “a responsibility toward individuals belonging to the given cultural or ethnic nation.”⁵⁶ The Hungarian Constitution, itself, contains many provisions that suggest a commitment to furthering the right to Hungarian culture. For example, the Preamble proclaims “that [their] national culture is a rich contribution to the diversity of European unity [and they] commit to promoting and safeguarding [their] heritage, [their] unique language, [and] Hungarian culture”⁵⁷ The Hungarian Constitution is also unique in its loyalty to ethnic Hungarians that are living outside of the country. Article D of the Hungarian Constitution states:

Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, shall facilitate the survival and development of their communities, shall support their efforts to preserve their Hungarian identity, the effective use of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands, and shall promote their cooperation with each other and with Hungary.⁵⁸

This demonstrates a heightened level of commitment to Hungarians and preserving the Hungarian identity, likely as a consequence of losing a large number of ethnic Hungarians to the re-drawing of the nation’s borders.

It is through this historical framework and understanding of the Hungarian Constitution that it becomes apparent that Hungary’s scope of commitment to culture goes beyond that of the Hungarian community. While the commitment to Hungary’s culture likely takes precedent over other cultures, the Hungarian Constitution carves out a provision specifically for other countries. The Preamble to the Constitution states, “We respect the freedom and culture of other nations,

54. *Id.*

55. *Id.*

56. ENIKŐ HORVÁTH, MANDATING IDENTITY: CITIZENSHIP, KINSHIP LAWS AND PLURAL NATIONALITY IN THE EUROPEAN UNION 139 (2008).

57. MAGYARORSZÁG ALAPTÖRVÉNYE [CONSTITUTION] Apr. 25 2011, (Hung.).

58. *Id.* at art. D.

and shall strive to cooperate with every nation of the world.”⁵⁹ Thus, there is an interest taken by the Hungarian government in uniting the many cultures of Europe. While this likely does not suggest that Hungary would agree to a decreased presence of Hungarian culture in its own country, it may suggest that there is a way for a nation’s preservation of its cultural identity to not only align with other cultures, but also to be able to co-exist with one another. This is also one of the many ideals the European Union aims to further through its mission statement.

B. *The Mission of the European Union*

Despite many nations’ concerns about protecting their own cultural identities, the European Union initiated the idea of having a “European cultural identity” with a desire to unite European nations together and to open borders between them.⁶⁰ However, this cultural ideal was not the original springboard for the creation of the European Union despite being the one that is in greater focus now when thinking about the European Union. The European Union was founded on the belief that, following an environment of high conflict in Europe during World War II, “countries that trade with one another become economically interdependent and so more likely to avoid conflict.”⁶¹ The result of this was the European Economic Community that included Belgium, Germany, France, Italy, Luxembourg, and the Netherlands.⁶² This economic community, then, transformed itself into a political one. The political nature is best seen through its democratic process, allowing all member-states to agree upon “voluntarily and democratically” binding agreements that set out the European Union’s goals in many areas of activity.⁶³ This is when the European Economic Community formally transitioned into the European Union that is thought of today.

The European Union’s goals span many different policy areas. The relevant focus groups—in the context of the refugee crisis and Hungary—include the discussions of human rights and the policies focusing specifically on humanitarian aid. In the realm of human rights, the European Union policy works toward “[promoting] the rights of women, children, minorities and displaced persons,” and “defending the *universal and indivisible nature* of human rights through full and active partnership with partner countries, international and regional organisations, and groups and associations at all levels of society.”⁶⁴ Further, the European Union “pursues *human rights dialogues* with over 40 countries and organisations” with an annual report that

59. *Id.*

60. *See generally* TENG, *supra* note 29.

61. *The EU in Brief*, EUR. UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last updated Oct. 11, 2016).

62. *Id.*

63. *Id.*

64. *Human Rights*, EUR. UNION, https://europa.eu/european-union/topics/human-rights_en (last updated Oct. 11, 2016).

“appraises its human rights work worldwide.”⁶⁵ In the realm of humanitarian aid and civil protection, the European Union works in all major crisis areas and in countries facing post-conflict instability.⁶⁶ Its goals include: saving lives, reducing suffering, and protecting the security and dignity of those affected.⁶⁷ While this mission becomes significant in the arena of the refugee crisis, the European Union’s annual budget is limited and, thus, resources can be sparse in times of need.⁶⁸

It is through an examination of these two policy areas that one can see the mission of “opening borders.” The idea of opening borders is one that poses the most conflict with the desire to preserve a nation’s cultural identity. Because the European Union aims to “defend human rights” through an “active partnership” with other nations and organizations, a nation’s cultural identity may be pushed into the background to pursue larger policy goals.⁶⁹ However, this is not the case. While the European Union establishes these goals that all of the member-states voluntarily agree upon and implement, it offers great deference to the individual member-states to achieve these goals. Hungary is, in fact, an important case study of a member-state that does not meet all of the requirements of the European Union in order to best protect its own country. Here, one can begin to see how the ideas of cultural identity and the opening of borders can co-exist.

C. *The Connection Between the European Union and the Refugee Crisis*

The European Union’s connection to the refugee crisis forces the reconciliation of three important ideas: (1) the European Union’s mission of opening borders among countries; (2) the European Union’s policy focus of human rights and preventing discrimination; and (3) nations’ individual desires to maintain their own cultural identities. These ideas can be reconciled through the examination of what policies the European Union currently has in place to aid the refugees and what it has done in response to the refugee crisis in many European countries, including Hungary.

Currently, the European Union has a Common European Asylum System (CEAS) that “ensure[s] that the rights of refugees under international law are protected in its member states [by setting] out minimum standards and procedures for processing and assessing asylum applications, and for the treatment of both asylum seekers and those who are granted refugee status.”⁷⁰ The issue with this system is that many European Union member-states have failed to implement the system correctly, producing, once again, interpretations of what the sys-

65. *Id.*

66. *Humanitarian Aid & Civil Protection*, EUR. UNION, https://europa.eu/european-union/topics/humanitarian-aid-civil-protection_en (last updated Oct. 11, 2016).

67. *Id.*

68. *Id.*

69. *Human Rights*, *supra* note 64.

70. *Understanding Migration and Asylum in the European Union*, OPEN SOC’Y FOUNDS., <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> (last updated October 2015) [hereinafter OPEN SOC’Y FOUNDS.].

tem is intended to do and creating uneven results.⁷¹ The European Union also has a “Dublin system” in place for asylum seekers traveling through many of the European Union member-states. This system “allows one EU country to send that person to the first EU country reached by the asylum seeker, so long as that person upholds the rights of asylum seekers.”⁷² This system, like the original CEAS, does not create many transfers and the “failures of asylum systems in Greece, Italy, and Hungary have led courts to block transfers.”⁷³

Given the failures of these systems, the European Union “pledged to take immediate action to prevent further losses of life and to improve conditions for those seeking protection in Europe [by relocating] migrants who reach the EU from countries at the EU’s external frontiers—like Italy, Greece, and Hungary—to countries which have few arrivals.”⁷⁴ While the European Union can be seen taking actions that promulgate the human rights policies that are in place, there is also some consideration of the best interest of the member-states. For example, through the current response to the refugee movement (of relocation to countries with few refugee arrivals), the European Union is acknowledging that Hungary, being the port of entry to the European Union states with its location, is receiving the most refugees out of the member-states. Thus, it is demonstrated that the European Union, in aiding these “external frontiers,” for example, is staying true to its mission of opening borders among countries (by the relocation of refugees into other safe member-states). In so, the European Union is committed to the human rights and anti-discrimination policies by protecting the refugees, and is making decisions that take into consideration an individual country’s resources, preferences, and abilities. While this consideration is based on more practical factors (e.g., the ability to accommodate the number of refugees in a smaller territory), the willingness of the European Union to examine these factors may suggest an understanding of a nation’s preference to place the focus on the needs of its own citizens. However, even though there is acknowledgement of individual countries’ abilities, there remains the fact that the European Union is “commit[ting] to build a single asylum and migration system” with popular understanding and support that would create “safe, legal means of migration.”⁷⁵ In order to be able to *enforce* this type of a uniform system, the European Union would need to create a system that acknowledges nations’ preferences for things like preserving cultural identity to maximize the utility of the system and to guarantee nations’ implementation. Thus, this is why creating a uniform system would pose problems for the nations that prioritize differently from other nations. Each nation would attempt to solve the refugee problem by considering their own resources, what protections

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

its citizens need, and what implications taking in refugees would have on their political, cultural, and economic systems.

IV. THE REFUGEE CRISIS

A. *Understanding the Crisis*

Months of media coverage and increased attention placed on European countries have produced conflicting views of the refugee crisis—a crisis that continues to evolve daily. This difference in reactions urges a step back in the analysis. It urges the acknowledgement that a problem of this scale, without a proactive solution in place, creates an atmosphere of chaos and moreover, brings to the surface issues that may have been silenced in the past. This is why, through the days of doubling populations, deaths, hunger strikes, and other traumatic incidences, a concept such as “cultural identity” or “opening borders” becomes as relevant as it is to the present discussion of prospective remedies.

Since the start of the Syrian civil war in 2011, 4.1 million Syrians have fled their home country.⁷⁶ In Europe alone, 750,000 migrants are estimated to have arrived by sea this year.⁷⁷ The most popular destination for migrants is in Germany, with 331,000 asylum applications having been received.⁷⁸ The second most popular destination is Hungary.⁷⁹ However, in reality, Hungary has the highest number of migrants “in proportion to its population.”⁸⁰ While the exact cause of the influx of migrants is not necessarily known, as suspicions regarding terrorism come to the surface, “[t]he conflict in Syria continues to be by far the biggest driver of the migration.”⁸¹ Even with an increasing number of migrants applying for asylum, European Union countries have only offered asylum to 184,665 refugees.⁸² Here, the vast number of migrants entering Europe creates a frightening truth—there are more refugees entering a country, and the current protocols that are in place are simply not enough to combat the problem.⁸³

The number of migrants entering Europe is not the only shocking statistic. Statistics dating back to August 2015 report that 2,500

76. Greg Myre, *The Migrant Crisis, By the Numbers*, NPR (Sept. 8, 2015, 12:34 PM), <http://www.npr.org/sections/parallels/2015/09/08/438539779/the-migrant-crisis-by-the-numbers>.

77. *Migrant crisis: Migration to Europe explained in seven charts*, BBC News (March 4, 2016), <http://www.bbc.com/news/world-europe-34131911> (listing statistic estimations, as the exact numbers are unclear due to an inability to detect all migrants that have passed through the border).

78. *Id.* (estimating that one way to calculate how many migrants are arriving in each country is through the number of asylum applications that are filed, but note that many of the migrants that come into European countries do not attempt to claim asylum upon their arrival).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *See id.* It is important to acknowledge that Europe is only one of the destinations that migrants are arriving in.

migrants have drowned in the Mediterranean following an attempt to migrate overseas, while at least fifty-two migrants were found to have suffocated due to an overcrowded boat.⁸⁴ These statistics are growing at a rapid rate, and many of the deaths or injuries of the migrants are not being reported. Thus, it is difficult to fully grasp the consequences of this large migration to Europe. Because of the increase in the number of migrant deaths and injuries over the past several months, countries have reaffirmed their commitment to embodying the policies of human rights and humanitarian aid that the European Union is founded upon.⁸⁵ These countries acknowledge that this is one of the greater human rights issues of the time, urging an immediate response and implementation of refugee systems that are in place.

B. Nations' Responses to the Refugee Crisis

Several nations have made arrangements with the United Nations High Commissioner for Refugees to best handle the refugee crisis. For example, the Denmark parliament allocates funding to a resettlement quota annually.⁸⁶ The nation follows recommendations from the Danish Immigration Service and the Minister of Justice decides the overall allocation of the five hundred resettlement places within four different categories: a geographical category, an emergency and urgent category, a medical category, and, finally, a category for families that "are accepted on a dossier basis together with a person accepted as a medical case under the Twenty-or-More programme" (a program for refugees with special medical needs).⁸⁷ Denmark also establishes a criterion for recognition of refugee status eligibility and asylum. This allows for exclusion factors to be considered as well as a distinction between asylum seekers and resettled refugees.⁸⁸ There are also factors for considering eligibility of this status. In its plan, Denmark points out its opportunity to help particular refugees "get a good and independent life in Denmark."⁸⁹ These examples are sexual minorities, families with children, adults with educational needs, women at risk with children, and human rights defenders.⁹⁰

Given Denmark's comprehensive plans, many other countries have followed suit. Sweden, Germany, and the United Kingdom are three countries that often get compared in terms of their responses to the refugee crisis. These countries are given a significant amount of focus because they are countries that are willing to take on a large number of

84. Alison Smale, Melissa Eddy & Kareem Fahim, *Europe Reels From More Migrant Deaths on Land and Sea*, N.Y. TIMES (Aug. 28, 2015), http://www.nytimes.com/2015/08/29/world/europe/migrants-bodies-austria-truck.html?_r=0.

85. See Kalyeena Makortoff, *Pressure mounts on Europe as migrant death toll soars*, CNBC (Aug. 31, 2015, 3:11 AM), <http://www.cnbc.com/2015/08/31/pressure-mounts-on-european-policy-makers-as-migrant-death-toll-rises.html>.

86. U.N. Hum. Rts. Comm'n, *Country Chapter Denmark*, in UNHCR RESETTLEMENT HANDBOOK (2016).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

refugees and do so in a positive manner, encouraging assimilation into the nation's political, economic, and cultural spheres.⁹¹ The United Kingdom, like the United States, has not yet committed to a set number of resettlement places; it is taking in refugees on an urgent need basis—focusing, specifically, on “particularly vulnerable Syrians.”⁹² Syrian refugees that are admitted on this basis will receive “humanitarian protection status, which is an immigration status given to individuals who need protection but do not meet the refugee criteria defined in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.”⁹³ This resettlement plan has been criticized because it is “unlikely to offer a substantial solution to the overburdened states hosting Syrian refugees or to the massive number of vulnerable Syrians living in them.”⁹⁴

In contrast, Germany has been rewarded for being the country that has “provided the most resettlement places” with Sweden coming in a close second.⁹⁵ This is largely due to the number of refugees that are seeking protection through asylum. Germany and Sweden “by far, received the greatest number of asylum applications by Syrian nationals . . . over a three-year period starting in 2012.”⁹⁶ In 2014, Germany received “41,100 Syrian asylum applications” which is three times the number of applications from 2013, and five times the number from 2012.⁹⁷ In Sweden, “30,750 Syrian asylum claims were made in 2014,” also a significant rise since 2012 (with 7,920 made in 2012).⁹⁸ While Germany and Sweden are applauded, and should be, for taking on the large number of migrants, there are certain factors that produce the differences in numbers among countries where refugees are seeking asylum. For example, the differences could be attributed to political policies and objectives, refugee friendly reputations among asylum seekers, family ties, ease of access and location, and procedural constraints.⁹⁹ As a result of this acknowledgement that certain factors may play a mitigating role in how countries respond to the refugee crisis, two recommendations are made: “Increase burden sharing by the international community as a whole [and i]ncrease distribution of the burden between states.”¹⁰⁰ While these recommendations will later be focused on more in depth, they present an initial understanding that for an increase in control over the refugee crisis, many nations need to bear the burden, not just a selective few.

91. Nicole Ostrand, *The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States*, 3 J. ON MIGRATION & HUM. SEC. 255 (2015). While the United States is also mentioned in this study, it will not be the focus of this part of the analysis.

92. *Id.* at 268.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 269.

97. *Id.*

98. *Id.*

99. *Id.* at 272.

100. *Id.* at 273.

While Germany and Sweden have been acknowledged for their refugee resettlement plans, there are concerns that they are holding too much of the burden. Since these initial plans were created, Germany has publicized how they are unable to take on more refugees.¹⁰¹ This suggests that, while these plans were working temporarily, long-term plans need to be made to aid countries like Germany from being overwhelmed with the number of refugees. These remedies are going to need to examine each nation and its needs individually.

C. Hungary's Response to the Refugee Crisis

Not all nations are responding to the pressures of rising refugee death rates and injuries by welcoming large numbers of refugees into their respective nations. Because of this, these nations are coming under fire—with an extra focus placed specifically on Hungary and its measures. While many political institutions are quick to claim that proactive measures are put into place to aid countries in situations identical to the one Hungary is currently facing, the scale of the current refugee crisis never could have been accurately predicted. Despite this, the United Nations, Amnesty International, the Serbian Prime Minister, and other countries are reprimanding the Hungarian government for the measures they have taken as “solutions” to the refugee crisis. It is important to note that Hungary’s geography plays an important role in why refugees are fleeing to the country versus other European Union member-states. Hungary is the first port of entry to the European Union for refugees coming from Syria, explaining why the European Union, itself, referred to Hungary as an “external frontier.”¹⁰² Hungary, as the port of entry, stressed the importance of documenting the refugees that were entering the country for fear that they would pose a threat to the Hungarian population. When this concern was not heard, Hungary implemented measures of its own.

Initially, the Hungarian government accepted the refugees as they entered into the country. When these numbers of migrants began to increase rather than come to a halt, Hungary took a variety of measures to prevent migrants from entering the country.¹⁰³ Among the first measures was a blockage of the transportation sites around the country with a razor-wire fence. Specifically, the Hungarian police force blocked one of Budapest’s main international train stations to prevent migrants from going to other European Union countries.¹⁰⁴ Many of

101. Jörg Luyken, *Germany unable to house 300,000 refugees*, THE LOCAL (Nov. 9, 2015, 5:27 PM), <http://www.thelocal.de/20151109/germany-hitting-capacity-to-take-in-refugees>.

102. OPEN SOC’Y FOUNDS., *supra* note 70.

103. For the purposes of the discussion in regard to the crisis in Hungary, the terms “migrant” and “refugee” will be used interchangeably to reflect the uncertainty countries have surrounding whether or not the individuals entering the respective countries are economic migrants that are seeking a better life or refugees that are, under the definition of the 1951 convention, escaping war or persecution.

104. Michele Gorman, *Hungary Police Block Migrants from Boarding Trains to EU Countries*, NEWSWEEK (Sept. 2, 2015, 11:01 AM), <http://www.newsweek.com/hungary-police-blocks-migrants-boarding-trains-eu-countries-367898>.

these refugees had desires to reach Germany where the country had agreed to take on more individuals that were seeking asylum.¹⁰⁵ In response to the blockage, migrants all around the train stations chanted about peace and freedom, urging the Hungarian police to allow them to use the transportation system.¹⁰⁶ While this blockage was seen as a harsh, embarrassing action, measures were only increased when the blockage was met with violence (e.g., breaking through the border gate), frustration, and anger. The Hungarian police force began using tear gas, pepper spray, and water cannons at the southern border of the country.¹⁰⁷ The country reacted in this manner out of concern that the refugees may have been of a dangerous nature and should not have had the ability to travel to any country they wanted—especially if they were fleeing war or persecution. In an address to Hungary, the United Nations chief, Ban Ki-Moon, disclosed his feelings surrounding Hungary's border patrol, "I was shocked to see how these refugees and migrants were treated. It's not acceptable . . . since they are the people who are fleeing the violence and persecution, we must ensure our compassionate leadership."¹⁰⁸ Furthermore, the Prime Minister of Serbia accused Hungary of "brutal and 'non-European' behaviour and urged the EU to respond."¹⁰⁹ Despite these reprimands, Hungary maintained that it was doing what was necessary for its country and looking to the best interests of its people.¹¹⁰

Despite Hungary's declaration of a state of emergency and countless efforts to warn refugees that certain measures would be taken if there was not cooperation, the actions of Hungary—especially those of the Prime Minister—have been continuously viewed in a negative light. In response to why Hungarians are resisting acceptance of newcomers, many individuals disclosed fears of the individuals that were coming in such rapid rates to the country.¹¹¹ One of the reasons given for resistance included, "It's a different culture. These people will never be an inherent part of our communities."¹¹² Others are worried about the amount of Hungarian resources it would take to accommodate the growing rate of refugees, stating, "A lot of Hungarians are angry because of the migrants, because they think, oh, my God, we have to pay so much money to take care of these people. We have to give them food, accommodation."¹¹³ A smaller group of Hungarians distinguish the types of individuals that are entering their country, "The Syrians

105. *Id.*

106. *Id.*

107. Patrick Kingsley, *Hungary's treatment of refugees is shocking and unacceptable, says UN*, THE GUARDIAN (Sept. 17, 2015), <https://www.theguardian.com/world/2015/sep/17/hungary-refugees-ban-ki-moon-eu-serbia>.

108. *Id.*

109. *Id.*

110. *Id.*

111. *On the front lines of the refugee crisis, Hungarians worry about accepting newcomers*, PBS (Sept. 9, 2015, 6:45 PM), <http://www.pbs.org/newshour/bb/front-lines-refugee-crisis-hungarians-worry-accepting-newcomers/>.

112. *Id.*

113. *Id.*

themselves should come because they are in trouble. But the refugees that are looking for a better life, maybe they should start making better lives in their country, rather than look for a better one in another place.”¹¹⁴

While the reasons for resistance in this small sample of the population is not inclusive of all of the reasons Hungarian citizens see the actions of the Hungarian government as reasonable, they do express important themes of the refugee crisis, in general. The most relevant of these themes is the expression of wanting to preserve the Hungarian culture. This is further evidenced by a Syrian refugee’s response to the Hungarian government’s actions, “We hope that the European people understand that diversity—diversity is good for them. We are looking just for a new life for our children, where they can access schools, where I can get a job, support my family.”¹¹⁵ While the feeling of sympathy is widely expressed among the Hungarian population, there is an underlying fear that not all of the Syrian refugees are well intentioned. The Hungarian government revealed, in response to criticisms of the measures they had taken, that a “known terrorist was among one of the 29 people arrested during the clashes.”¹¹⁶ It is clear that the majority of the Syrian refugees do not pose a threat to the Hungarian population—or, in fact, to the majority of the European population. However, this information revealed by the Hungarian government confirms that there is a fear in accepting new people into the country without knowing anything about their background, their intentions regarding assimilation, and any formal paperwork documenting their journey.

Hungary, serving as an example of a country that has lost much of its population due to conflict situations,¹¹⁷ has a heightened desire to protect its citizens from loss. While this loss, in the past, has been the loss of individuals’ statuses as Hungarian citizens, it also represents a loss of cultural identity. With the fear that Hungary’s cultural identity could be threatened once again by refugees with their own cultural identity, Hungary has taken measures that will prevent unmanageable numbers from entering the country. The Prime Minister of Hungary explained that his country “had a ‘democratic right’ to a different approach but recommended a global solution to the crisis”—one that would “involve the whole world in the handling of this refugee crisis, migrant crisis.”¹¹⁸ This is the foundation on which to build the idea that individual nations have the right to pursue different solutions to the refugee crisis—especially, when the right to culture or, specifically, the right to cultural identity is implicated.

114. *Id.*

115. *Id.*

116. Kingsley, *supra* note 107.

117. This is in reference to the World War I and II history outlined earlier that resulted in the loss of ethnic Hungarians to Romanian territory.

118. Dan Nolan, *Refugee crisis: EU divided as Hungary attacks migrant quota as ‘unrealisable and nonsense,’* THE TELEGRAPH (Sept. 23, 2015, 3:47 PM), <http://www.telegraph.co.uk/news/worldnews/europe/hungary/11884665/Refugee-crisis-EU-divided-as-Hungary-attacks-migrant-quota-as-unrealisable-and-nonsense.html>.

V. ANALYSIS

A. *The Margin of Appreciation*

The margin of appreciation is a doctrine that can aid in the analysis of what could happen if nations were forced to implement uniform solutions to the refugee crisis. This is largely due to the fact that the margin of appreciation demonstrates the level of deference that may be afforded to nations if they have a legitimate reason for pursuing certain policies or remedies. Once an individual has exhausted all domestic legal remedies, he or she may bring a claim to the European Court of Human Rights. The margin of appreciation is used at this level “[to establish] a methodology for scrutiny by international courts of the decisions of national authorities—i.e., national governments, national courts and other national actors.”¹¹⁹ The margin of appreciation is not absolute—it requires that states exercise their discretion in good faith, and “international courts are ultimately authorized to review whether national decisions are reasonable—namely, whether the course of action selected by the state conforms with the object and purpose of the governing norm.”¹²⁰ The source of this doctrine stems from the “inherent power of international judicial bodies to determine their own procedures and to effectively exercise their jurisdiction Such broad powers arguably include the ability of courts to set applicable standards of review.”¹²¹ Thus, much discretion is afforded to the national decision-making body, as the decision likely aligns with particular goals and values of each individual nation.

Two cases serve as examples of how the margin of appreciation is applied: *Lautsi and Others v. Italy* and *A, B, and C v. Ireland*. The first case, *Lautsi*, arose because of the idea that many nations in Europe allow religious influences to make an appearance in public life and expression.¹²² Ms. Lautsi sued on behalf of her two school-age sons, who were students at an Italian public school.¹²³ Like many of the other schools in the country, the specific Italian public school at issue displayed crucifixes in its classrooms. After exhausting her domestic remedies, Ms. Lautsi continued to argue in the European Court of Human Rights that the display of the crucifix was depriving her right to raise her children as she believed best.¹²⁴ While, at first, the case was decided in Ms. Lautsi’s favor, affording her the opportunity to make decisions about religious upbringing for her children without the country’s interference, the Grand Chamber overturned the decision and relied heavily on the margin of appreciation. The Court ruled that since the schools were openly tolerant of other religious symbols and celebrated other religious holidays, the crucifixes were merely an additional expression of a religion that featured prominently in Italy’s his-

119. Shany, *supra* note 3, at 909 (2005).

120. *Id.* at 910–11.

121. *Id.* at 911.

122. *Lautsi v. Italy*, 2011-III Eur. Ct. H.R. 61.

123. *Id.*

124. *Id.*

tory.¹²⁵ Here, it can be seen that the Court was giving significant deference to Italy's openly tolerant nature of other religions and the historical value the crucifixes served. It recognized the importance of religion and how it was embodied in the country's values, thus stating that a solution in this case could vary according to the country and the era.¹²⁶

The same deference to a particular country's rights was applied in the case of *A, B and C v. Ireland*. The three applicants were women who were over 18 years of age who travelled to England for an abortion because their home country of Ireland would not allow them to have one.¹²⁷ They argued that the restrictions placed on abortion in Ireland interfered with their privacy and were in violation of Article 8 of the Right to Respect for Private and Family Life.¹²⁸ The decision of the Court found no violation for two of the applicants because of the margin of appreciation doctrine. The "question of the legal protection of the right to life fell within the States' margin of appreciation," as the margin is construed broadly, not narrowly.¹²⁹

These cases and the margin of appreciation doctrine become relevant in the discussion of the refugee crisis because of their deference to the protection of certain states' values, especially in the realm of remedies. For example, if a Syrian refugee brought a claim citing the 1951 Convention against Hungary for the measures it had taken in preventing his or her entrance into the country, and the refugee had exhausted all domestic remedies to earn a spot in the European Court of Human Rights, there is a chance that the broad margin of appreciation doctrine would afford Hungary the deference in determining what actions to take to best protect its people, especially if its purpose was mirrored in the remedies used. This determination would likely be made after assessing if Hungary acted in good faith when implementing measures against the refugees. Given that the Hungarian government has maintained that it is, and has, advanced measures that it sees necessary for the protection of the country, the margin of appreciation may prove to be a beneficial legal guideline in resolving whether or not countries can take individualized solutions in responding to the refugee crisis. Additionally, it may offer an assessment of a country's relevant history and values to aid in the decision of whether or not the country was acting in good faith when implementing certain measures or restrictions.

B. *The Reconciliation of the Right to Cultural Identity and the Right to Refuge*

At first glance, the right to refuge and the right to preserve cultural identity may seem to be in direct conflict with one another. As dis-

125. *Id.*

126. *Id.*

127. *A, B & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185.

128. *Id.*

129. *Id.* at 246.

cussed earlier, there are negative consequences for not being able to exercise either of the two rights. The importance of reconciling these rights is best seen in the area of remedies. Although the European Union treaties leave immigration and resettlement of refugees in the hands of individual nations, it has often been said that if the European Union and the United Nations High Commissioner for Refugees could implement a uniform solution, it would be more successful. As made clear by the examples of Germany, Sweden, Denmark, the United Kingdom, and Hungary, nations are unable to reach uniformity in the implementation of remedies to the refugee crisis. While this is largely due to the different criteria countries have of what individuals constitute refugees, the protocols in place, and the lack of enforcement of these systems, the source may also be that nations do not feel like the remedies are tailored enough to acknowledge their individual resources, or lack thereof, or their desire to preserve certain rights for their citizens (i.e., the right to culture). Thus, if a uniform plan was created and enforced by the European Union, it would be highly unsuccessful.

However, if these remedies were allotted nation-specific modifications based on a nation's resources, population, and territory, and allowed for the recognition of particular state interests like the right to preserve cultural identity, the implementation and utilization of such a system would increase dramatically. This, in turn, would give individuals that feel unsafe in their countries the ability to choose what country they seek refuge in based on a country's resources, quotas, individual state interests, etc. Refugees, then, would not be met with harsh measures of border patrol if a country was not only prepared to receive refugees because of a proactive remedy in place but also because it was aware that its individualized plans would protect the best interests of both the country and the citizens living in the country. Individual countries know their own abilities and resources better than an agent who merely creates a plan without tailoring it to the individual countries and without knowing the scope of the problem at hand, forcing the plan to become more of a reactive measure than a proactive measure. Thus, it becomes clear that the right to refuge and the right to culture or the right to preserve cultural identity, specifically, are not in opposition with one another when they are both acknowledged and given the proper protection.

VI. CONCLUSION

Human rights crises are often the most difficult crises to face. With these states of crises come a shocking statistic of injuries and deaths, forcing nations that have taken the solution most contrary to refugee rights, by a subjective standard, to serve as the scapegoat. The difficulty stems from the fact that the refugee crisis is, in fact, incredibly tragic. Given this, it becomes crucial to understand how to implement remedies that nations can utilize frequently and willingly. It is because of this very need that the discussion of the right to refuge being recon-

ciled with the right to culture became relevant because, through the co-existence of these rights, remedies become more manageable and accepted.

In states of emergency, remedies to the emergency tend to be reactive in nature. This forces nations to consider protection of its own nations and citizens as of the utmost importance. While this is what all citizens of a nation would hope for its leadership, the human rights issue that may be at stake becomes part of the background rather than being the focal point it deserves to be. Given this, it is important to assess what values a nation aims to protect through its remedies. In the context of Hungary, the focus was placed on the fear citizens felt that an influx of refugees, without the proper system in place, could dominate a Hungarian population that had already experienced a significant amount of loss. This loss was not just territorial—it represented a loss of an identity that Hungarians, typically, show pride towards. Because of this, the measures taken were violent and erred more on the side of skepticism and fear rather than sympathy and acceptance. The reprimands that Hungary has received in response to this solution require a shift in perspective. Rather than having other European nations transfer blame onto Hungary—a nation that was being affected by the largest number of refugees—an opportunity was presented to assess what interests Hungary was protecting. Once these interests were uncovered, it would become easier to create remedies that would respond to these interests and allow practical implementation.

While the right to refuge and the right to preserve one's cultural identity have not been frequently tested as at odds with one another, the present refugee crisis offers an opportunity to both understand the rights individually and to promote the reconciliation of them. To best handle the human rights issue the refugee crisis presents, nations must be given deference to protect the interests of its own citizenry. It is after this deference has been granted that a nation will best be able to transition from its defensive reaction to the promotion of an open, understanding, and accepting atmosphere through an individualized, tailored remedy for refugees.